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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-570

THURMAN L. DODSON,

Petitioner,

v.

THEODORE J. SCHEVE, *et al.*,

Respondent,

and

FLORENCE HAWKINS,

Petitioner,

v.

DISTRICT OF COLUMBIA, *et al.*,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF OF RESPONDENTS THEODORE J. SCHEVE & GERALDINE E. SCHEVE

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On Brief

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals, affirming the opinions of the trial courts, has been officially reported at 339 A.2d 39 (1974). The Order of the District of Columbia Court of Appeals denying the petition for rehearing *en banc* has not been officially reported but appears in appendix of petitioners' brief.

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JURISDICTION

Respondent does not question the statement of jurisdiction set forth in the petition.

QUESTIONS PRESENTED

Petitioners' brief misstates the nature of the legal issue properly before this Court for review. Based upon the findings of fact of the trial courts, the issue presented by this case is:

> (1) whether a substantial federal question is presented where Petitioners assert that their real property was conveyed by the District of Columbia in compliance with statutory authority, following tax deed proceedings of which Petitioners were provided with "effective notice"?

STATEMENT OF THE CASE

The statement of the case in Petitioners' Brief was prepared in disregard for certain critical and central facts found by the trial courts and affirmed by the District of Columbia Court of Appeals as set forth in its opinion.

On appeal, the District of Columbia Court of Appeals correctly held to be non-justiciable the petitioners' challenges to the due process sufficiency of the District of Columbia tax deed proceedings:

> At trial, appellants sought to set aside these deeds from the District to the Scheves and to clear title to their respective property. Their actions were based on the claim that the notice provisions of D.C. Code 1973, §§ 47-1001

and 47-1001(a), were not reasonably calculated to notify them that they were in danger of losing title to their properties, and, accordingly, that the conveyance from the District to the Scheves constituted a taking without due process. In both cases appellants conceded that the District had complied with the above statutory notice requirements. *On the records before us we need not, and therefore should not,*[2] *address this constitutional issue*[3] *since we affirm the trial judges' findings that in each case the appellant was in fact effectively notified of the pending conveyance of the property.*

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[2] *See Buch v. Texas,* 372 U.S. 586, 590 (1963); *Powell v. Washington Metropolitan Area Transit Comm'n,* 151 U.S. App. D.C. 295, 466 F.2d 466 (1972).

[3] It is an argument of dubious validity under all the circumstances attendant to the collection of funds for the public treasury, ownership of realty, the universal knowledge of dire consequences for nonpayment of taxes, and the existence of a substantial period of redemption.

Dodson v. Scheve, 339 A.2d 39, 40 (D.C. Ct. App. 1975) (Footnote omitted; emphasis supplied).

With regard to the notice provided to petitioner Dodson of the pending tax deed proceedings, the District of Columbia Court of Appeals found that respondent District of Columbia, in addition to the required forms of notice, mailed to petitioner Dodson at his place of business a certified mail letter advising him of the expiring redemption period. This letter, not statutorily required, was sent as a courtesy by respondent District of Columbia and was received

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for petitioner Dodson by an employee in the building wherein he maintained his law offices whose function it was to receive and distribute mail. Dodson denied receipt of said letter, but no finding of fact was made upon this point. Instead, the trial court held and the District of Columbia Court of Appeals affirmed that irrespective of petitioner's receipt of said letter, the District of Columbia, by sending the letter and by complying with the statutory provisions for notice had undertaken measures reasonably calculated to notify petitioner of the pending proceedings and that petioner had been accorded effective notice.

With regard to notice provided to petitioner Hawkins of the pending tax deed proceedings, the District of Columbia Court of Appeals summarized and affirmed the findings of the trial court as follows:

> It is apparent from the trial court's ruling that it rejected the testimony of appellant Hawkins that she did not receive the District's letter prior to conveyance of her property at the expiration of her redemption period. The court also found, as in the case of Mr. Dodson, that the District had mailed to her a final notice of delinquency prior to sale. *Thus, the record can fairly be read to support a finding of actual notice of the sale and the expiring redemption period. Dodson v. Scheve,* 339 A.2d 39, 41 (D.C. Ct. App. 1975) (emphasis supplied)

Respondents Scheve concur in the statement by petitioners in their Brief that respondent District of Columbia fully complied with the requirements of the District of Columbia Code regarding notice to petitioners of proceedings against their real property for non-payment of taxes.

ARGUMENT

THE PETITION FAILS TO RAISE A SUBSTANTIAL FEDERAL QUESTION AND SHOULD BE DENIED:

The issues pressed upon this Court by Petitioners are too theoretical and hypothetical for determination. *See, Aetna Life Insurance Co. v. Haworth,* 300 U.S. 227, 240-241, 57 S.Ct. 461, 81 L.Ed. 889 (1937), *reh. den.,* 300 U.S. 687, 57 S.Ct. 667, 81 L.Ed. 889 (1937). A comparison of the issues presented with the facts as found by the trial courts in the actions below and affirmed on appeal, reveals a disparity so great as to render non-justiciable the issues presented herein by petitioners.[1] This Court has often deferred deciding constitutional questions in advance of the necessity of deciding same. *Peters v. Hobby,* 349 U.S. 331, 339-340, 75 S.Ct. 790, 99 L.Ed. 1129 (1955).

Even assuming, *arguendo,* that the issues raised by Petitioners are suitably framed for resolution, they nonetheless fail to present a substantial federal question. This Court has uniformly upheld the constitutionality of state and municipal statutes regulating tax deed proceedings in the face of due process challenges;[2] these statutes have

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[1] As more particularly set forth in Respondents' Statement of Case, *supra,* the trial courts found and as fact and the appellate court affirmed that each petitioner received "effective notice" of tax deed proceedings pending against their respective real property, and that petitioner Hawkins received "actual notice' of said proceedings.

[2] *See,* e.g., *Winona & St. Paul Land Co. v. Minnesota,* 159 U.S. 526, 16 S. Ct. 83, 40 L.Ed. 1021 (1895); *Castillo v. McConnico,*

(continued)

uniformly provided for notice of the pending proceedings to interested parties in a manner no more calculated to advise them of said proceedings than the provisions of the District of Columbia statutes challenged herein.[3] Furthermore, the claim of petitioner Dodson upon its facts is controlled by the decision of this Court in *Nelson v. New York, supra.* The claim of petitioner Hawkins, the recipient of actual notice, can only fairly be held to present a substantial federal question if this Court is prepared to rule that delinquent taxpayers in tax deed proceedings are entitled to continuing and repeated actual notice of the proceedings and/or that that tax deed proceedings where actual notice is provided delinquent taxpayers nonetheless constitute a taking of property without due process of law. Since both of these propositions are absurd on their face, it is submitted that the claim of petitioner Hawkins does not present a substantial federal question for this Court's determination.

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[2] (continued)
168 U.S. 674, 18 S.Ct. 229, 42 L.Ed. 622 (1898); *Longyear v. Toolan,* 209 U.S. 414, 28 S.Ct. 506, 52 L.Ed. 859 (1908); *Ontario Land Co. v. Yordy,* 212 U.S. 152, 29 S.Ct. 278, 53 L.Ed. 449 (1909); *Nelson v. New York,* 352 U.S. 103, 77 S.Ct. 195, 1 L.Ed. 2d 171 (1956); *Balthazar v. Mari, Ltd.,* 301 F. Supp. 103 (N.D. Ill. 1969), *aff'd. per curium,* 396 U.S. 114, 90 S.Ct. 397, 24 L.Ed. 2d 307 (1969); *Catoor v. Blair,* 358 F. Supp. 815 (N.D. Ill. 1973), *aff'd. per curium,* 414 U.S. 990, 94 S.Ct. 345, 39 L.Ed. 2d 231, *reh. den.,* 414 U.S. 1172, 94 S.Ct. 934, 39 L.Ed. 2d 121 (1973); *Botens v. Aronauer,* 32 N.Y. 2d 243, 298 N.E. 2d 73 (Ct. App. NY 1973), *appeal dismissed,* 414 U.S. 1059, 94 S.Ct. 562, 38 L.Ed. 2d 464 (1973); *City of Auburn v. Mandarelli,* 320 A.2d 22 (S.Ct. Mne. 1974), *appeal dismissed,* 419 U.S. 810, 95 S.Ct. 25, 42 L.Ed. 2d 37 (1974).

[3] *Id.*

Finally, due process requirements vary with the nature of the proceeding involved and the nature of the rights affected[4]; accordingly, the references by Petitioners to decisions of this Court dealing with, for example, pre-judgment attachment are clearly not in point and not relevant in determinations by this Court of due process sufficiency of notice provisions in tax deed proceedings.

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[4] This Court has described due process, generally, as embodying "the differing rules of fair play, which through the years, have become associated with differing types of proceedings." *Hannah v. Larche,* 363 U.S. 420, 442, 80 S.Ct. 1502, 4 L.Ed. 2d 1307 (1960).

CONCLUSION

It is respectfully submitted that petitioners have wholly failed to sustain their burden of establishing, pursuant to Rule 19, that the District of Columbia Court of Appeals in deciding the appeal before it, decided any substantial federal question in a manner not in accord with prior holdings of this Court or that the District of Columbia Court of Appeals decided any federal question of substance which has not heretofore been decided by this Court. The District of Columbia Court of Appeals correctly refrained, on ground of lack of justiciable case or controversy, from determining the purported issue here presented by petitioners to this Court.

Respectfully submitted,

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